

In-Home Supportive Services (IHSS) Statute

Welfare and Institutions Code

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

- (1) Assistance with ambulation.
- (2) Bathing, oral hygiene, and grooming.
- (3) Dressing.
- (4) Care and assistance with prosthetic devices.
- (5) Bowel, bladder, and menstrual care.
- (6) Repositioning, skin care, range of motion exercises, and transfers.

- (7) Feeding and assurance of adequate fluid intake.
- (8) Respiration.

- (9) Assistance with self-administration of medications.

(d) Personal care services are available if these services are provided in the beneficiary's home and other locations as may be authorized by the director. Among the locations that may be authorized by the director under this paragraph is the recipient's place of employment if all of the following conditions are met:

(1) The personal care services are limited to those that are currently authorized for a recipient in the recipient's home and those services are to be utilized by the recipient at the recipient's place of employment to enable the recipient to obtain, retain, or return to work. Authorized services utilized by the recipient at the recipient's place of employment shall be services that are relevant and necessary in supporting and maintaining employment. However, workplace services shall not be used to supplant any reasonable accommodations required of an employer by the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.; ADA) or other legal entitlements or third-party obligations.

(2) The provision of personal care services at the recipient's place of employment shall be authorized only to the extent that the

total hours utilized at the workplace are within the total personal care services hours authorized for the recipient in the home. Additional personal care services hours may not be authorized in connection with a recipient's employment.

(e) Where supportive services are provided by a person having the legal duty pursuant to the Family **Code** to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

- (1) Services related to domestic services.
- (2) Personal care services.
- (3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.
- (4) Protective supervision only as needed because of the functional limitations of the child.

(5) Paramedical services.

(f) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(g) A person who is eligible to receive a personal care service or an ancillary service provided pursuant to Section **14132.95** shall not be eligible to receive that same service pursuant to this article.

(h) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section **14132.95**, including any adjustments that may be made to those services pursuant to subdivision (e) of Section **14132.95**.

(2) Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section **14132.95** for the same mode of service unless otherwise provided in the annual Budget Act.

(3) Any recipient receiving services under both Section **14132.95** and this article shall receive no more than 283 hours of service per month, combined, and any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

12300.1. As used in Section 12300 and in this article, "supportive services" include those necessary paramedical services that are

ordered by a licensed health care professional who is lawfully authorized to do so, which persons could provide for themselves but for their functional limitations. Paramedical services include the administration of medications, puncturing the skin or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed health care professional. These necessary services shall be rendered by a provider under the direction of a licensed health care professional, subject to the informed consent of the recipient obtained as a part of the order for service. Any and all references to Section 12300 in any statute heretofore or hereafter enacted shall be deemed to be references to this section. All statutory references to the supportive services specified in Section 12300 shall be deemed to include paramedical services.

12300.2. In any in-home supportive services action concerning the amount of in-home supportive services to be provided, the department shall send a notice of the action to each recipient. The recipient shall also receive a description of each specific task authorized and the number of hours allotted. In the case of reassessment, the recipient shall receive an identification of hours for tasks increased or reduced and the difference from previous hours authorized.

12301. (a) The intent of the Legislature in enacting this article is to provide supplemental or additional services to the social and rehabilitative services in Article 6 (commencing with Section 12250) of this chapter. The Legislature further intends that necessary in-home supportive services shall be provided in a uniform manner in every county based on individual need consistent with this chapter and, for the 1992-93 fiscal year the appropriation provided for those services in the Budget Act, in the absence of alternative in-home supportive services provided by an able and willing individual or local agency at no cost to the recipient, except as required under Section 12304.5. An able spouse who is available to assist the recipient shall be deemed willing to provide at no cost any services under this article except nonmedical personal services and paramedical services. When a spouse leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care, the spouse shall also be paid for accompaniment when needed during necessary travel to health-related appointments and protective supervision.

(b) Each county shall be notified of its allocation and projected caseload by July 31 of each fiscal year, or 30 days after the enactment of the Budget Act, whichever occurs later.

(c) This section shall remain operative until July 1, 1993, and on and after that date, shall remain inoperative until July 1, 1994, at which date, this section shall become operative.

12301.03. (a) Notwithstanding any other provision of law, effective October 1, 1992, and for the remainder of the 1992-93 fiscal year, unless additional funds become available earlier for IHSS from the personal care option, the department shall implement a 12 percent reduction in hours of service to each recipient of services under this article. For those recipients who have a documented unmet need because of the limitations contained in Section 12303.4, this reduction shall be applied first to the unmet need before being applied to the hours to be authorized. If the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction, the recipient may apply for a restoration of reduction pursuant to Section 12301.05.

(b) It is the intent of the Legislature to encourage counties, to the extent possible, to achieve reductions in a manner that least disrupts the continuity of services to recipients. Counties are further encouraged, to the extent possible, to assist recipients in locating supplemental services, such as congregate or home-delivered meals, and to assist providers in obtaining additional hours of employment to mitigate the impact of reductions upon them.

(c) Notice of the reduction required by subdivision (a) shall be provided to each recipient and shall include the following information:

(1) The amount of hours the recipient received prior to the reduction and the amount of hours the recipient is to receive as a result of the reduction.

(2) The reason for the reduction.

(3) A statement that the reduction shall be effective through June 30, 1993, unless additional funds become available earlier for IHSS as a result of provision of Personal Care services.

(4) How all or part of the reduction may be restored as set forth in Section 12301.05 if the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction.

(d) Notice of the reduction shall be provided to providers as expeditiously as possible by the Controller, in consultation with the department.

(e) Notwithstanding Section 11004, in any proceeding pursuant to Section 10950 where it has been determined that the sole issue was the reduction required by this section, any aid paid pending the

hearing shall be recoverable as an overpayment.

12301.05. Any aged, blind, or disabled individual who is eligible for services under this chapter who has had his or her services reduced under subdivision (a) of Section 12301.03 but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored may apply for an IHSS care supplement. Where there is such an application within 10 days of receiving the reduction notice or prior to the implementation of the reduction, the IHSS shall continue until the county finds that the recipient does or does not require restoration of any hours through the IHSS care supplement. If the recipient disagrees with the county's determination concerning the need for the IHSS care supplement, the recipient may request a hearing on that determination. However, there will be no aid paid pending in that case.

(b) For purposes of subdivision (a), an individual is in serious risk of out-of-home placement only if (1) the individual meets the criteria for long-term care services as set forth in the Manual of Criteria for Medi-Cal Authorization published by the State Department of Health Services (January 1, 1982, last amended September, 1991), or (2) the individual cannot summon emergency assistance.

(c) The county shall give a high priority to prompt screening of these persons to determine their need for IHSS Care Supplement.

12301.1. The department shall adopt regulations establishing a uniform range of services available to all eligible recipients based upon individual needs. The availability of services under these regulations are subject to the provisions of Section 12301 and county plans developed pursuant to Section 12302. The county welfare department shall assess the continuing need of services for each recipient as necessary, but at least once every 12 months.

12301.2. A time for task guideline may be used only if it is appropriate in meeting the individual's particular circumstances. Counties shall not use time for task guidelines in assessing the need of eligible individuals for the services described in subdivision (e) of Section 12304.

12301.3. (a) Each county shall appoint an in-home supportive services advisory committee that shall be comprised of not more than 11 individuals. No less than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or as recipients of services under this article.

(1) (A) In counties with fewer than 500 recipients of services provided pursuant to this article or Section **14132.95**, at least one

member of the advisory committee shall be a current or former provider of in-home supportive services.

(B) In counties with 500 or more recipients of services provided pursuant to this article or Section **14132.95**, at least two members of the advisory committee shall be a current or former provider of in-home supportive services.

(2) Individuals who represent organizations that advocate for people with disabilities or seniors may be appointed to committees under this section.

(3) Individuals from community-based organizations that advocate on behalf of home care employees may be appointed to committees under this section.

(4) A county board of supervisors shall not appoint more than one county employee as a member of the advisory committee, but may designate any county employee to provide ongoing advice and support to the advisory committee.

(b) Prior to the appointment of members to a committee required by subdivision (a), the county board of supervisors shall solicit recommendations for qualified members through a fair and open process that includes the provision of reasonable written notice to, and reasonable response time by, members of the general public and interested persons and organizations.

(c) The advisory committee shall submit recommendations to the county board of supervisors on the preferred mode or modes of service to be utilized in the county for in-home supportive services.

(d) Any county that has established a governing body, as provided in subdivision (b) of Section 12301.6, prior to July 1, 2000, shall not be required to comply with the composition requirements of subdivision (a) and shall be deemed to be in compliance with this section.

12301.4. (a) Each advisory committee established pursuant to Section 12301.3 or 12301.6 shall provide ongoing advice and recommendations regarding in-home supportive services to the county board of supervisors, any administrative body in the county that is related to the delivery and administration of in-home supportive services, and the governing body and administrative agency of the public authority, nonprofit consortium, contractor, and public employees.

(b) Each county shall be eligible to receive state reimbursements of administrative costs for only one advisory committee and shall comply with the requirements of subdivision (e) of Section 12302.25.

12301.5. The department may secure to the extent feasible such in-home supportive and other health services for persons eligible under this article to which they are entitled under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of this part).

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government **Code**.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable, written notice to, and a reasonable response time by, members of the general public and

interested persons and organizations.

(4) If the enabling ordinance does not designate the board of supervisors as the governing body of the public authority, the enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (e) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government **Code**. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (e) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) Investigation of the qualifications and background of potential personnel.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.

(5) Performing any other functions related to the delivery of in-home supportive services.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States **Code** are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to

this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services Program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(g) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) (1) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of a public authority pursuant to paragraph (1) of subdivision (c), that are agreed to by that public authority in collective bargaining with the designated representative of the in-home supportive services personnel pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government **Code** and transfer the deducted funds as directed in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States **Code**, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States **Code**, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(l) (1) The department may adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government **Code**. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government **Code**, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11364.1 and Section 11349.6 of the Government **Code**, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California **Code** of Regulations. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section **14132.95**, all of the following shall apply:

(A) Subdivision (c) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (g) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Paragraph (1) shall become inoperative when the State

Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section **14132.95**.

(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.

(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further ensure the well-being of recipients and the most efficient delivery of required services.

(o) Commencing July 1, 1997, the department shall provide annual reports to the appropriate fiscal and policy committees of the Legislature on the efficacy of the implementation of this section, and shall include an assessment of the quality of care provided pursuant to this section.

12301.7. The annual administrative cost for any public authority or nonprofit consortium created pursuant to Section 12301.6, exclusive of any increase in provider wages or benefits or employer taxes when negotiated or agreed to by the public authority or nonprofit consortium, shall be shared by the state and the counties as prescribed in Section 12306.

12302. Each county is obligated to ensure that services are provided to all eligible recipients during each month of the year in accordance with the county plan.

In order to implement such a plan, an individual county may hire homemakers and other in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service, or may contract with a city, county, or city and county agency, a local health district, a voluntary nonprofit agency, a proprietary agency, or an individual or make direct payment to a recipient for the purchase of services.

County plans are effective upon submission to the department. In reviewing county plans the department shall assure that plans are in compliance with provisions of this article including compliance with Section 12301. In the event the department finds a county plan is not in compliance it shall take appropriate action to assure

compliance.

The department shall monitor the actual monthly expenditures where available for services to assure compliance with the county plans. If the county's expenditure pattern is not consistent with the plan, the department shall require the county to amend the plan.

12302.1. (a) Contracts entered into by a county under Section 12302 shall be for terms not exceeding three years. In the event of a three-year contract, the county, at the end of the first contract term, may renew the contract for a second term not exceeding one year. The rate of reimbursement shall be negotiated consistent with regulations promulgated by the State Department of Social Services. For any extended contract, the rate shall reflect, but is not limited to, the following financial considerations:

(1) Actual expenditures by the contractor as documented during the first contract term and approved by the state.

(2) Changes in federal, state, or county program requirements.

(3) Federal and state minimum wage and contractual step merit increases.

(4) Statutory taxes.

(5) Insurance costs.

(6) Reasonable costs which have been approved by the county department of social services, as long as those costs do not increase unreimbursed county expenditures or lead to a reduction in client services, and those costs can be funded within the maximum allowable rates set by the department for in-home supportive services contracts and the county's state allocation for in-home supportive services.

(7) Other reasonable costs over which the contracting parties have no control.

(b) (1) Except as provided in paragraph (2), the purchase of services regulations adopted by the department that govern county welfare departments shall also govern acceptable in-home supportive services contracting, including the methods used to advertise, procure, select, and award the contracts, and the procedures used to amend, renew, or extend an existing contract with the same contractor, including, in addition to rate changes, any other change in other terms of the contract. In no case shall the department's regulations governing in-home supportive services contracting procedures differ from the contract procedures specified in the department's purchase of service regulations for other services purchased by county welfare departments, except as required by federal law.

(2) The department may, through regulation, require until July 1, 2000, the prior review of all bid and contract documents for managed care contracts under Section 12302.7.

12302.2. (a) (1) If the state or a county makes or provides for direct payment to a provider chosen by a recipient or to the

recipient for the purchase of in-home supportive services, the department shall perform or assure the performance of all rights, duties and obligations of the recipient relating to those services as required for purposes of unemployment compensation, unemployment compensation disability benefits, workers' compensation, federal and state income tax, and federal old-age survivors and disability insurance benefits. Those rights, duties, and obligations include, but are not limited to, registration and obtaining employer account numbers, providing information, notices, and reports, making applications and returns, and withholding in trust from the payments made to or on behalf of a recipient amounts to be withheld from the wages of the provider by the recipient as an employer and transmitting those amounts along with amounts required for all contributions, premiums, and taxes payable by the recipient as the employer to the appropriate person or state or federal agency. The department may assure the performance of any or all of these rights, duties, and obligations by contract with any person, or any public or private agency.

(2) Contributions, premiums, and taxes shall be paid or transmitted on the recipient's behalf as the employer for any period commencing on or after January 1, 1978, except that contributions, premiums, and taxes for federal and state income taxes and federal old-age, survivors and disability insurance contributions shall be paid or transmitted pursuant to this section commencing with the first full month that begins 90 days after the effective date of this section.

(3) Contributions, premiums, and taxes paid or transmitted on the recipient's behalf for unemployment compensation, workers' compensation, and the employer's share of federal old-age survivors and disability insurance benefits shall be payable in addition to the maximum monthly amount established pursuant to Section 12303.5 or subdivision (a) of Section 12304 or other amount payable to or on behalf of a recipient. Contributions, premiums, or taxes resulting from liability incurred by the recipient as employer for unemployment compensation, workers' compensation, and federal old-age, survivors and disability insurance benefits with respect to any period commencing on or after January 1, 1978, and ending on or before the effective date of this section shall also be payable in addition to the maximum monthly amount established pursuant to Section 12303.5 or subdivision (a) of Section 12304 or other amount payable to or on behalf of the recipient. Nothing in this section shall be construed to permit any interference with the recipient's right to select the provider of services or to authorize a charge for administrative costs against any amount payable to or on behalf of a recipient.

(b) If the state makes or provides for direct payment to a provider chosen by a recipient, the Controller shall make any deductions from the wages of in-home supportive services personnel that are authorized by Sections 1152 and 1153 of the Government **Code**,

as limited by Section 3515.6 of the Government **Code**.

(c) Funding for the costs of administering this section and for contributions, premiums, and taxes paid or transmitted on the recipient's behalf as an employer pursuant to this section shall qualify, where possible, for the maximum federal reimbursement. To the extent that federal funds are inadequate, notwithstanding Section 12306, the state shall provide funding for the purposes of this section.

12302.21. (a) For purposes of providing cost-efficient workers' compensation coverage for in-home supportive services providers under this article, the department shall assume responsibility for providing workers' compensation coverage for employees of nonprofit agencies and proprietary agencies who provide in-home supportive services pursuant to contracts with counties. The workers' compensation coverage provided for these employees shall be provided on the same terms as provided to providers under Section 12302.2 and 12302.5.

(b) A county that has existing contracts with nonprofit agencies or proprietary agencies whose employees will be provided workers' compensation coverage by the department pursuant to subdivision (a), shall reduce the contract hourly rate by fifty cents (\$0.50) per hour, effective on the date that the department implements this section.

12302.25. (a) On or before January 1, 2003, each county shall act as, or establish, an employer for in-home supportive service providers under Section 12302.2 for the purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government **Code** and other applicable state or federal laws. Each county may utilize a public authority or nonprofit consortium as authorized under Section 12301.6, the contract mode as authorized under Sections 12302 and 12302.1, county administration of the individual provider mode as authorized under Sections 12302 and 12302.2 for purposes of acting as, or providing, an employer under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government **Code**, county civil service personnel as authorized under Section 12302, or mixed modes of service authorized pursuant to this article and may establish regional agreements in establishing an employer for purposes of this subdivision for providers of in-home supportive services. Within 30 days of the effective date of this section, the department shall develop a timetable for implementation of this subdivision to ensure orderly compliance by counties. Recipients of in-home supportive services shall retain the right to choose the individuals that provide their care and to recruit, select, train, reject, or change any provider under the contract mode or to hire, fire, train, and supervise any provider under any other mode of service. Upon request of a recipient, and in addition to a

county's selected method of establishing an employer for in-home supportive service providers pursuant to this subdivision, counties with an IHSS caseload of more than 500 shall be required to offer an individual provider employer option.

(b) Nothing in this section shall prohibit any negotiations or agreement regarding collective bargaining or any wage and benefit enhancements.

(c) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(d) Prior to implementing subdivision (a), a county shall establish an advisory committee as required by Section 12301.3 and solicit recommendations from the advisory committee on the preferred mode or modes of service to be utilized in the county for in-home supportive services.

(e) Each county shall take into account the advice and recommendations of the in-home supportive services advisory committee, as established pursuant to Section 12301.3, prior to making policy and funding decisions about the program on an ongoing basis.

(f) In implementing and administering this section, no county, public authority, nonprofit consortium, contractor, or a combination thereof, that delivers in-home supportive services shall reduce the hours of service for any recipient below the amount determined to be necessary under the uniform assessment guidelines established by the department.

(g) Any agreement between a county and an entity acting as an employer under subdivision (a) shall include a provision that requires that funds appropriated by the state for wage increases for in-home supportive services providers be used exclusively for that purpose. Counties or the state may undertake audits of the entities acting as employers under the terms of subdivision (a) to verify compliance with this subdivision.

(h) On or before January 15, 2003, each county shall provide the department with documentation that demonstrates compliance with the January 1, 2003, deadline specified in subdivision (a). The documentation shall include, but is not limited to, any of the following:

(1) The public authority ordinance and employee relations procedures.

(2) The invitations to bid and requests for proposal for contract services for the contract mode.

(3) An invitation to bid and request for proposal for the operation of a nonprofit consortium.

(4) A county board of supervisors' resolution resolving that the county has chosen to act as the employer required by subdivision (a) either by utilizing county employees, as authorized by Section 12302,

to provide in-home supportive services or through county administration of individual providers.

(5) Any combination of the documentation required under paragraphs (1) to (4), inclusive, that reflects the decision of a county to provide mixed modes of service as authorized under subdivision (a).

(i) Any county that is unable to provide the documentation required by subdivision (h) by January 15, 2003, may provide, on or before that date, a written notice to the department that does all of the following:

(1) Explains the county's failure to provide the required documentation.

(2) Describes the county's plan for coming into compliance with the requirements of this section.

(3) Includes a timetable for the county to come into compliance with this section, but in no case shall the timetable extend beyond March 31, 2003.

(j) Any county that fails to provide the documentation required by subdivision (h) and also fails to provide the written notice as allowed under subdivision (i), shall be deemed by operation of law to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government **Code** as of January 15, 2003.

(k) Any county that provides a written notice as allowed under subdivision (i), but fails to provide the documentation required under subdivision (h) by March 31, 2003, shall be deemed by operation of law to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government **Code** as of April 1, 2003.

(l) Any county deemed by operation of law, pursuant to subdivision (j) or (k), to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government **Code** shall continue to act in that capacity until the county notifies the department that it has established another employer as permitted by this section, and has provided the department with the documentation required under subdivision (h) demonstrating the change.

(m) Section 10605 may be applied in each county that has not complied with this section by January 1, 2003.

12302.3. (a) Notwithstanding any other provision of this article, and in a manner consistent with the powers available to public authorities created under this article, the City and County of San Francisco may do any of the following:

(1) Increase the wages of all in-home supportive services providers.

(2) Subject to the requirements of federal law, use county-only funds to fund county and state shares to meet federal financial participation requirements necessary to obtain any available personal

care services reimbursement under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) (Medicaid).

(3) Provide in-home supportive services workers with any wage increase the city and county may appropriate, as long as this amount is in accordance with the provisions of the Medi-Cal State Plan Amendment 94-006, as approved by the federal Health Care Financing Administration. The county-only funds shall be used exclusively to increase workers' wages and to pay any proportionate share of employer taxes and current benefits, and to pay for the cost of state and county administration of these activities as provided for in paragraph (5). Notwithstanding Section 12302.1, any wage increase for those workers employed under contract shall be passed through by the contractor to the workers, subject to the limitations specified in this paragraph. The state shall continue to provide payroll functions for all workers who are currently individual providers unless and until the in-home supportive services public authority is operational.

(4) Claim the administrative costs of the wage passthrough in accordance with the department's claiming requirements.

(5) If that federal financial participation is available for county-only payroll moneys, the following shall apply:

(A) If additional payroll costs will be incurred by the state due to the receipt and payment of federal funds, the department shall provide the city and county with a detailed estimate of the additional costs of the provision of payroll functions associated with the processing of federal funds. If the city and county elects to pay the additional costs, the department will provide these payroll functions. If the city and county does not elect to pay the additional costs, the department and the city and county may seek another, mutually satisfactory arrangement.

(B) If that federal financial participation is not available, the department shall continue to perform the existing payroll functions provided on July 28, 1995, at no additional cost to the city and county.

(b) (1) This section shall not be implemented with respect to any particular wage increase pursuant to subdivision (a) unless the department has obtained the approval of the State Department of Health Services for that wage increase prior to its execution to determine that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(2) The Director of Health Services shall seek any federal waivers or approvals necessary for implementation of this section under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

12302.4. A county, in receiving bids for a contract pursuant to Sections 12302, 12302.1, and 12303, may evaluate all or any bidders

to determine their responsibility, and their responsiveness to the requirements of the bidding document. The county may take all of the following into account:

(a) Whether the bidder possesses adequate financial resources, or the ability to obtain those resources as required before the beginning of the performance of the contract.

(b) Whether the bidder has the ability to comply with the proposed delivery and performance schedule, taking into consideration available expertise and any other existing business commitments.

(c) Whether the bidder has any record of unsatisfactory performance. In determining if a bidder has a record of unsatisfactory performance, the bidder shall submit a list to the county of all prior in-home supportive services contracts awarded, if any. A county may review past contracts, if any, to determine if the bidder's past in-home supportive services contract performance has been unsatisfactory.

(d) Whether the bidder has any record of lack of integrity or poor business ethics.

(e) Whether the bidder is otherwise qualified and eligible to receive an award under applicable statutes and regulations.

(f) Whether the bid substantially and materially complies with all requirements of the county's bidding document.

12302.5. (a) Counties may establish entities or agents to act on behalf of the employers for those recipients who are designated as the employer of the in-home supportive services worker and who elect not to, or who are unable to, ensure compliance with all applicable federal, state, and county wage, hour, and workplace laws.

(b) Any entity or agent established pursuant to this section shall not restrict or interfere with the right of a recipient to select, replace, and terminate the employment of his or her own provider of in-home supportive services and to set his or her own service schedule.

12303. A contract pursuant to Section 12302 shall include the following provisions:

(a) The cost of the service shall not exceed by more than 10 percent the allowable cost of the service as determined by the State Department of Social Services.

(b) The provider agency shall agree to give preference to the training and employment of recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment.

(c) The cost of the purchase of such service will qualify, where possible, for the maximum federal reimbursement.

(d) A bond may be obtained to secure payment of wages in the event that bankruptcy, liquidation, embezzlement, fraud, or other factors prevent payment of wage claims to homemakers, homemaker chore

workers, or other in-home supportive service personnel.

The provisions of this section shall not restrict the right of a chartered county from providing a civil service classification for in-home supportive service personnel.

12303.4. (a) Any aged, blind, or disabled individual who is eligible for assistance under this chapter or Chapter 4 (commencing with Section 12500), and who is not described in Section 12304, shall receive services under this article which do not exceed the maximum of 195 hours per month.

(b) Any aged, blind, or disabled individual who is eligible for assistance under this chapter or Chapter 4 (commencing with Section 12500), who is in need, as determined by the county welfare department, of at least 20 hours per week of the services defined in Section 12304, shall be eligible to receive services under this article, the total of which shall not exceed a maximum of 283 hours per month.

12303.6. (a) No adjustment shall be made under this article for the 1990-91 fiscal year to reflect any change in the cost of living.

(b) Any cost-of-living adjustment under this article for the 1991-92 fiscal year and any fiscal year thereafter pursuant to Section 12303.5 shall not include any adjustment to reflect increases for the cost of living for the 1990-91 fiscal year.

12303.7. Any aged, or disabled applicant or recipient who is eligible for assistance under this article, whose disabilities prevent the use of cooking facilities at home, shall be given the option to receive an allowance of forty-nine dollars (\$49) per month for an individual and ninety-eight dollars (\$98) per month for a married couple in lieu of the appropriate in-home food preparation and consumption services. The allowance under this section shall be in addition to any amount that the applicant or recipient is entitled to under this chapter. This allowance shall not have the effect of exceeding the total cost maximum of Sections 12303.5 and 12304. Nothing in this section shall be construed to limit the applicant's or recipient's right to receive the allowance under this section and all other homemaker and chore services.

The State Department of Social Services shall adjust the amount of the allowance under this section on July 1, 1984, and each year thereafter to reflect cost-of-living changes subsequent to January 1, 1983, as provided under Section 12303. 5.

12304. (a) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 and who is capable of handling his or her own financial and legal

affairs shall be given the option of hiring and paying his or her own provider of in-home supportive services. For this purpose the individual shall be entitled to receive a monthly cash payment in advance not to exceed an amount to reimburse providers for the maximum amount of hours specified in subdivision (b) of Section 12303.4, which is in addition to his or her grant, if any. An individual who is not capable of handling his or her own financial and legal affairs shall be entitled to receive the cash payment through his or her guardian, conservator, or protective payee.

(b) In no event shall the maximum total cost for services and advance cash payment for one individual recipient under subdivision (b) of Section 12303.4 and subdivision (a) exceed an amount to reimburse providers for the maximum hours specified in subdivision (b) of Section 12303.4.

(c) The county welfare department shall inform in writing any individual who is potentially eligible for services under this section of his or her right to the services.

(d) For purposes of subdivision (b) of Section 12303.4, a recipient who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 is one who requires in-home supportive care of at least 20 hours per week to carry out any or all of the following:

(1) Routine bodily functions, such as bowel and bladder care and respiration assistance.

(2) Dressing, oral hygiene, and grooming.

(3) Preparation and consumption of food and meal cleanup for individuals who require assistance with the preparation and consumption of food.

(4) Moving into and out of bed, other assistance in transferring, turning in bed, and other repositioning.

(5) Bathing, routine bed baths, and washing.

(6) Ambulation and care and assistance with prostheses.

(7) Rubbing of skin to promote circulation.

(8) Paramedical services.

(9) Any other function of daily living as determined by the director.

This determination of need shall be supported by a medical report when requested and shall be prepared at the expense of the State Department of Social Services.

12304.1. In the selection of providers to perform services pursuant to this article, preference shall be given to any qualified individual provider who is chosen by any recipient of personal care services as defined in subdivision (c) of Section 12300.

12304.2. (a) A recipient who receives services under this article

through either a contract or managed care provider may, subject to program requirements, select any qualified person to provide care under this article.

(b) For purposes of this section, "qualified person" means any employee of the contract or managed care provider through which the recipient may receive services under this article who is available and eligible to provide the services.

12304.3. Any recipient of services under this article who has received benefits under this article for at least one year, and who hires and pays his or her own service providers, as permitted under subdivision (b) of Section 12304, may receive his or her grant under this article through an electronic transfer. The Controller shall offer electronic transfer services to these recipients as soon as the option of electronic transfer is available to state employees for the receipt of wages.

12304.5. Any aged, blind, or disabled individual who would be eligible for assistance under this chapter or under Chapter 4 (commencing with Section 12500), except for his excess income, is eligible to receive a payment under this article to purchase in-home supportive services if his income is insufficient to provide for the cost of such care, and he is otherwise qualified under this article.

12304.6. The county welfare department shall provide to each visually impaired applicant or recipient of benefits under this article, upon determination or redetermination of eligibility for benefits under this article, information on, and referral services to, community public and nonprofit entities that provide reading services to visually impaired persons.

12305. Any aged, blind, or disabled individual who would be eligible for assistance under this chapter or Chapter 4 (commencing with Section 12500), except for his excess income, and who receives services under this article, shall be eligible for Medi-Cal benefits as a categorically needy recipient under Section 14005.1, provided that his nonexempt income in excess of the sum in the applicable subdivision of Section 12200 is used toward the purchase of such services.

12305.1. (a) Any aged, blind, or disabled individual who is receiving Medi-Cal personal care services pursuant to subdivision (p) of Section **14132.95**, and who would otherwise be deemed a categorically needy recipient pursuant to Section 12305, is eligible to receive a supplementary payment under this article to be used towards the purchase of personal care services.

(b) A supplementary payment pursuant to this section shall be the

difference between the following amounts:

(1) A beneficiary's excess income as determined under Section 12304.5.

(2) The beneficiary's nonexempt income as determined pursuant to Section 14005.7, in excess of the income levels for maintenance need pursuant to Section 14005.12.

(c) Notwithstanding subdivisions (a) and (b), no supplementary payment shall be made pursuant to this section unless the amount specified in paragraph (2) of subdivision (b) is larger than the amount specified in paragraph (1) of subdivision (b).

(d) In the event of a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Health Care Financing Administration that supplemental payments to medically needy persons not receiving services pursuant to subdivision (p) of Section **14132.95** must be made, then this section and subdivision (p) of Section **14132.95** shall cease to be operative on the first day of the month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(e) In the event that the Department of Finance determines that the costs of the supplementary payments made under this section exceed the savings resulting from federal financial participation in providing services under subdivision (p) of Section **14132.95**, this section and subdivision (p) of Section **14132.95** shall cease to be operative on the first day of the first month following such a determination and a 30-day notification in writing by the Department of Finance to the chairperson of the committee in each house of the Legislature that considers appropriations, the chairperson of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee. Persons who had been eligible for a supplementary payment under this section shall be eligible to receive uninterrupted services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, if otherwise eligible.

12305.5. (a) Notwithstanding any other provision of this chapter, any person who:

(1) Was once determined to be disabled in accordance with Section 1614 of Part A of Title XVI of the Social Security Act (Section 1382c, Title 42, United States **Code**), and

(2) Became ineligible for benefits under this chapter because the person engaged in substantial gainful activity, and

(3) Continues to suffer from the physical or mental impairments which were the basis of the disability determination required under

paragraph (1), and

(4) Requires in-home supportive care to carry out any or all of the following:

- (A) Routine bodily functions, such as bowel or bladder care.
- (B) Dressing.
- (C) Preparation and consumption of food.
- (D) Moving into and out of bed.
- (E) Routine bed bath.
- (F) Ambulation.
- (G) Any other function of daily living as determined by the director;

shall be considered to be disabled, for the purposes of this article only, even though such person is engaged in substantial gainful activity. Regardless of whether such person has excess income, such person shall be eligible to receive payment under this article to purchase in-home supportive services if his income is insufficient to provide for the cost of such care, and he is otherwise qualified under this article.

(b) For purposes of this section, "substantial gainful activity" means work activity considered to be substantial gainful activity under applicable federal regulations adopted pursuant to Section 1614 of Part A of Title XVI of the Social Security Act.

(c) The determination of continued impairments and the need for in-home supportive care shall be supported by medical reports when requested. Such reports shall be provided at the expense of the department.

(d) This section shall not be construed as creating any entitlement to state supplementation pursuant to Section 12150.

12305.6. (a) Notwithstanding any other provision of law, any person specified in subdivision (b) shall be eligible for in-home supportive services under this chapter.

(b) Subdivision (a) shall apply to any person who meets all of the following requirements:

(1) He or she is not eligible for benefits under this chapter because of the provisions of federal Public Law 104-193 affecting eligibility under Title XVI of the Social Security Act.

(2) He or she would be eligible for benefits under this chapter but for the provisions of federal Public Law 104-193 affecting eligibility under Title XVI of the Social Security Act. Eligibility under this chapter shall include the same deeming provisions pursuant to Title XVI of the Social Security Act (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42, United States **Code**).

(3) He or she continues to meet all other applicable eligibility criteria for receiving benefits under this chapter.

12306. (a) The state and counties shall share the annual cost of providing services under this article as specified in this section.

(b) Except as provided in subdivisions (c) and (d), the state shall pay to each county, from the General Fund and any federal funds received under Title XX of the federal Social Security Act available for that purpose, 65 percent of the cost of providing services under this article, and each county shall pay 35 percent of the cost of providing those services.

(c) For services eligible for federal funding pursuant to Title XIX of the federal Social Security Act under the Medi-Cal program and, except as provided in subdivisions (b) and (d) the state shall pay to each county, from the General Fund and any funds available for that purpose 65 percent of the nonfederal cost of providing services under this article, and each county shall pay 35 percent of the nonfederal cost of providing those services.

(d) (1) For the period of July 1, 1992, to June 30, 1994, inclusive, the state's share of the cost of providing services under this article shall be limited to the amount appropriated for that purpose in the annual Budget Act.

(2) The department shall restore the funding reductions required by subdivision (c) of Section 12301, fully or in part, as soon as administratively practicable, if the amount appropriated from the General Fund for the 1992-93 fiscal year under this article is projected to exceed the sum of the General Fund expenditures under Section **14132.95** and the actual General Fund expenditures under this article for the 1992-93 fiscal year. The entire amount of the excess shall be applied to the restoration. Services shall not be restored under this paragraph until the Department of Finance has determined that the restoration of services would result in no additional costs to the state or to the counties relative to the combined state appropriation and county matching funds for in-home supportive services under this article in the 1992-93 fiscal year.

12306.1. (a) When any increase in provider wages or benefits is negotiated or agreed to by a public authority or nonprofit consortium under Section 12301.6, then the county shall use county-only funds to fund both the county share and the state share, including employment taxes, of any increase in the cost of the program, unless otherwise provided for in the annual Budget Act or appropriated by statute. No increase in wages or benefits negotiated or agreed to pursuant to this section shall take effect unless and until, prior to its implementation, the department has obtained the approval of the State Department of Health Services for the increase pursuant to a determination that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act, and unless and until all of the following conditions have been met:

(1) Each county has provided the department with documentation of the approval of the county board of supervisors of the proposed public authority or nonprofit consortium rate, including wages and

related expenditures. The documentation shall be received by the department before the department and the State Department of Health Services may approve the increase.

(2) Each county has met department guidelines and regulatory requirements as a condition of receiving state participation in the rate.

(b) Any rate approved pursuant to subdivision (a) shall take effect commencing on the first day of the month subsequent to the month in which final approval is received from the department. The department may grant approval on a conditional basis, subject to the availability of funding.

(c) The state shall pay 65 percent, and each county shall pay 35 percent, of the nonfederal share of wage and benefit increases negotiated by a public authority or nonprofit consortium pursuant to Section 12301.6 and associated employment taxes, only in accordance with subdivisions (d) to (f), inclusive.

(d) (1) The state shall participate as provided in subdivision (c) in wages up to seven dollars and fifty cents (\$7.50) per hour and individual health benefits up to sixty cents (\$0.60) per hour for all public authority or nonprofit consortium providers. This paragraph shall be operative for the 2000-01 fiscal year and each year thereafter unless otherwise provided in paragraphs (2), (3), (4), and (5), and without regard to when the wage and benefit increase becomes effective.

(2) The state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to nine dollars and ten cents (\$9.10) per hour, if wages have reached at least seven dollars and fifty cents (\$7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the nine dollars and ten cents (\$9.10) per hour shall be used to fund wage increases above seven dollars and fifty cents (\$7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative for the 2001-02 fiscal year and each fiscal year thereafter, unless otherwise provided in paragraphs (3), (4), and (5).

(3) The state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to ten dollars and ten cents (\$10.10) per hour, if wages have reached at least seven dollars and fifty cents (\$7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the ten dollars and ten cents (\$10.10) per hour shall be used to fund wage increases above seven dollars and fifty cents (\$7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative commencing with the next state fiscal year for which the May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenue, excluding transfers, for the year in which paragraph (2) became

operative.

(4) The state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to eleven dollars and ten cents (\$11.10) per hour, if wages have reached at least seven dollars and fifty cents (\$7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the eleven dollars and ten cents (\$11.10) per hour shall be used to fund wage increases or individual health benefits, or both. This paragraph shall be operative commencing with the next state fiscal year for which the May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenues, excluding transfers, for the year in which paragraph (3) became operative.

(5) The state shall participate as provided in subdivision (c) in a total cost of wages and individual health benefits up to twelve dollars and ten cents (\$12.10) per hour, if wages have reached at least seven dollars and fifty cents (\$7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the twelve dollars and ten cents (\$12.10) per hour shall be used to fund wage increases above seven dollars and fifty cents (\$7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative commencing with the next state fiscal year for which the May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenues, excluding transfers, for the year in which paragraph (4) became operative.

(e) (1) On or before May 14 immediately prior to the fiscal year for which state participation is provided under paragraphs (2) to (5), inclusive, of subdivision (d), the Director of Finance shall certify to the Governor, the appropriate committees of the Legislature, and the department that the condition for each subdivision to become operative has been met.

(2) For purposes of certifications under paragraph (1), the General Fund revenue forecast, excluding transfers, that is used for the relevant fiscal year shall be calculated in a manner that is consistent with the definition of General Fund revenues, excluding transfers, that was used by the Department of Finance in the 2000-01 Governor's Budget revenue forecast as reflected on Schedule 8 of the Governor's Budget.

(f) Any increase in overall state participation in wage and benefit increases under paragraphs (2) to (5), inclusive, of subdivision (d), shall be limited to a wage and benefit increase of one dollar (\$1) per hour with respect to any fiscal year. With respect to actual changes in specific wages and health benefits negotiated through the collective bargaining process, the state shall participate in the costs, as approved in subdivision (c), up to the

maximum levels as provided under paragraphs (2) to (5), inclusive, of subdivision (d).

12306.2. (a) Notwithstanding any other provision of law, for the 2000-01 fiscal year, the state shall pay 65 percent and each county shall pay 35 percent of the nonfederal share of any increase to individual provider wages a county chooses to grant, up to 3 percent above the statewide minimum wage.

(b) This section shall not apply to providers who are employees of a public authority or nonprofit consortium pursuant to Section 12301.6.

(c) This section shall be operative on January 1, 2001.

12306.21. (a) Notwithstanding any other provision of law, for the 2001-02 fiscal year, the state shall pay 65 percent and each county shall pay 35 percent of the nonfederal share of any increase to individual provider wages a county chooses to grant, up to 5.31 percent above the statewide minimum wage.

(b) This section shall not apply to providers who are employees of a public authority or nonprofit consortium pursuant to Section 12301.6.

(c) This section shall become operative on July 1, 2001.

12306.3. In consultation with stakeholder organizations, including, but not limited to, the California State Association of Counties and employee organizations representing in-home supportive service workers, the department shall develop and evaluate various options for providing health care benefits for uninsured individual in-home supportive services providers who are not employees of a public authority or nonprofit consortium under Section 12301.6. The department shall report its findings and recommendations to the Legislature by January 15, 2001.

12306.5. (a) Any public or private agency, including a contractor under Section 12302.1, who maintains a list or registry of prospective in-home supportive services providers shall require proof of identification from a prospective provider. This identification shall be provided prior to placing the prospective provider on a list or registry or supplying a name from the list or registry to an applicant for, or recipient of, in-home supportive services.

(b) For purposes of this section, proof of identification includes, but is not limited to, a positive photograph identification from a government source.

12307. The amendments to Sections 12302, 12303 and 12304 of, and the addition of Sections 12303.5 and 12304.5 to, the Welfare and

Institutions Code made by Chapter 75 of the Statutes of 1974 do not constitute a change in, but are declaratory of, the preexisting law.

12308. Funding of this article is subject to the provisions of Part 1.5 (commencing with Section 10100) of this division.

12309. (a) In order to assure that in-home supportive services are delivered in all counties in a uniform manner, the department shall develop a uniform needs assessment tool.

(b) (1) Each county shall, in administering this article, use the uniform needs assessment tool developed pursuant to subdivision (a) in collecting and evaluating information.

(2) For purposes of paragraph (1), "information" includes, but is not limited to, all of the following:

(A) The recipient's living environment.

(B) Alternative resources.

(C) The recipient's functional abilities.

(c) (1) The uniform needs assessment tool developed pursuant to subdivision (a) shall evaluate the recipient's functioning in activities of daily living and instrumental activities of daily living.

(2) The recipient's functioning shall be quantified, using the general hierarchical five-point scale for ranking each function, as specified in subdivision (d).

(d) The recipient's functioning ranks shall be as follows:

(1) Rank one. A recipient's functioning shall be classified as rank one if his or her functioning is independent, and he or she is able to perform the function without human assistance, although the recipient may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his or her safety.

(2) Rank two. A recipient's functioning shall be classified as rank two if he or she is able to perform a function, but needs verbal assistance, such as reminding, guidance, or encouragement.

(3) Rank three. A recipient's functioning shall be classified as rank three if he or she can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.

(4) Rank four. A recipient's functioning shall be classified as rank four if he or she can perform a function, but only with substantial human assistance.

(5) Rank five. A recipient's functioning shall be classified as rank five if he or she cannot perform the function, with or without human assistance.

12310. It is the intent of the Legislature that the department conduct special pilot projects to test appropriate methods for

assuring equity and efficiency in reducing program costs necessary to remain within budget appropriations pursuant to Sections 12301 and 12306, and which use the experience gained and the techniques developed by the in-home supportive services demonstration projects conducted by the University of California in Alameda, Contra Costa, and Marin Counties. The department may establish pilot projects in Alameda and Marin Counties for the purpose of assessing methods which allow for all of the following:

- (a) Greater equity in decisions regarding eligibility and level of service as a means of reducing program costs.
- (b) Administrative reforms that promote greater economy in program administration.
- (c) Less costly processes for periodic redetermination of eligibility and service awards.

12311. The director is authorized to grant such waivers from the provisions of this article as are necessary to carry out the purposes and intent of this section, however, the county must provide services within its allocation. The department shall evaluate the results of these pilot studies which shall include a comparison of results obtained by nonpilot counties in their efforts to maintain a budget-managed in-home supportive services program.

12312. The department shall report to the Joint Budget Committee of the Legislature an interim report describing the status of the pilot projects no later than December 1, 1981. A final report describing the results achieved by the pilot projects with recommendations for future legislation regarding statewide implementation of successful pilot study findings shall be submitted by the department to the Joint Legislative Budget Committee no later than May 1, 1982.

Medi-Cal Personal Care Services Program (PCSP) Statute

Welfare and Institutions Code

14132.95. (a) Personal care services, when provided to a categorically needy person as defined in Section 14050.1 is a covered benefit to the extent federal financial participation is available if these services are:

- (1) Provided in the beneficiary's home and other locations as may be authorized by the director subject to federal approval.
- (2) Authorized by county social services staff in accordance with a plan of treatment.
- (3) Provided by a qualified person.
- (4) Provided to a beneficiary who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without

the services described in this section.

(b) The department shall seek federal approval of a state plan amendment necessary to include personal care as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the **Code** of Federal Regulations. For any persons who meet the criteria specified in subdivision (a) or (p), but for whom federal financial participation is not available, eligibility shall be available pursuant to Article 7 (commencing with Section 12300) of Chapter 3, if otherwise eligible.

(c) Subdivision (a) shall not be implemented unless the department has obtained federal approval of the state plan amendment described in subdivision (b), and the Department of Finance has determined, and has informed the department in writing, that the implementation of this section will not result in additional costs to the state relative to state appropriation for in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3, in the 1992-93 fiscal year.

(d) (1) For purposes of this section, personal care services shall mean all of the following:

- (A) Assistance with ambulation.
- (B) Bathing, oral hygiene and grooming.
- (C) Dressing.
- (D) Care and assistance with prosthetic devices.
- (E) Bowel, bladder, and menstrual care.
- (F) Skin care.
- (G) Repositioning, range of motion exercises, and transfers.
- (H) Feeding and assurance of adequate fluid intake.
- (I) Respiration.
- (J) Paramedical services.
- (K) Assistance with self-administration of medications.

(2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.

(e) (1) (A) After consulting with the State Department of Social Services, the department shall adopt emergency regulations to establish the amount, scope, and duration of personal care services available to persons described in subdivision (a) in the fiscal year whenever the department determines that General Fund expenditures for personal care services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, are expected to exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992-93 fiscal year pursuant to Article 7 (commencing with Section

12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute. At least 30 days prior to filing these regulations with the Secretary of State, the department shall give notice of the expected content of these regulations to the fiscal committees of both houses of the Legislature.

(B) In establishing the amount, scope, and duration of personal care services, the department shall ensure that General Fund expenditures for personal care services provided for under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, do not exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992-93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute.

(C) For purposes of this subdivision, "caseload growth" means an adjustment factor determined by the department based on (1) growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability, (2) the average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1988-89 to 1992-93 fiscal years, inclusive, due to the level of impairment, and (3) any increase in program costs that is required by an increase in the mandatory minimum wage.

(2) In establishing the amount, scope, and duration of personal care services pursuant to this subdivision, the department may define and take into account, among other things:

(A) The extent to which the particular personal care services are essential or nonessential.

(B) Standards establishing the medical necessity of the services to be provided.

(C) Utilization controls.

(D) A minimum number of hours of personal care services that must first be assessed as needed as a condition of receiving personal care services pursuant to this section.

The level of personal care services shall be established so as to avoid, to the extent feasible within budgetary constraints, medical out-of-home placements.

(3) To the extent that General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1992-93 fiscal year, adjusted for caseload growth, exceed General Fund expenditures for services provided under this section and expenditures of both General Fund

moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in any fiscal year, the excess of these funds shall be expended for any purpose as directed in the Budget Act or as otherwise statutorily disbursed by the Legislature.

(f) Services pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of Chapter 3, for the In-Home Supportive Services program. A provider of personal care services shall be qualified to provide the service and shall be a person other than a member of the family. For purposes of this section, a family member means a parent of a minor child or a spouse.

(g) A beneficiary who is eligible for assistance under this section shall receive services that do not exceed 283 hours per month of personal care services.

(h) Personal care services shall not be provided to residents of facilities licensed by the department, and shall not be provided to residents of a community care facility or a residential care facility for the elderly licensed by the Community Care Licensing Division of the State Department of Social Services.

(i) Subject to any limitations that may be imposed pursuant to subdivision (e), determination of need and authorization for services shall be performed in accordance with Article 7 (commencing with Section 12300) of Chapter 3.

(j) (1) To the extent permitted by federal law, reimbursement rates for personal care services shall be equal to the rates in each county for the same mode of services in the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3, plus any increase provided in the annual Budget Act for personal care services rates or included in a county budget pursuant to paragraph (2).

(2) (A) The department shall establish a provider reimbursement rate methodology to determine payment rates for the individual provider mode of service that does all of the following:

(i) Is consistent with the functions and duties of entities created pursuant to Section 12301.6.

(ii) Makes any additional expenditure of state general funds subject to appropriation in the annual Budget Act.

(iii) Permits county-only funds to draw down federal financial participation consistent with federal law.

(B) This ratesetting method shall be in effect in time for any rate increases to be included in the annual Budget Act.

(C) The department may, in establishing the ratesetting method required by subparagraph (A), do both of the following:

(i) Deem the market rate for like work in each county, as determined by the Employment Development Department, to be the cap

for increases in payment rates for individual practitioner services.

(ii) Provide for consideration of county input concerning the rate necessary to ensure access to services in that county.

(D) If an increase in individual practitioner rates is included in the annual Budget Act, the state-county sharing ratio shall be as established in Section 12306. If the annual Budget Act does not include an increase in individual practitioner rates, a county may use county-only funds to meet federal financial participation requirements consistent with federal law.

(3) (A) By November 1, 1993, the department shall submit a state plan amendment to the federal Health Care Financing Administration to implement this subdivision. To the extent that any element or requirement of this subdivision is not approved, the department shall submit a request to the federal Health Care Financing Administration for any waivers as would be necessary to implement this subdivision.

(B) The provider reimbursement ratesetting methodology authorized by the amendments to this subdivision in the 1993-94 Regular Session of the Legislature shall not be operative until all necessary federal approvals have been obtained.

(k) (1) The State Department of Social Services shall, by September 1, 1993, notify the following persons that they are eligible to participate in the personal care services program:

(A) Persons eligible for services pursuant to the Pickle Amendment, as adopted October 28, 1976.

(B) Persons eligible for services pursuant to subsection (c) of Section 1383c of Title 42 of the United States **Code**.

(2) The State Department of Social Services shall, by September 1, 1993, notify persons to whom paragraph (1) applies and who receive advance payment for in-home supportive services that they will qualify for services under this section without a share of cost if they elect to accept payment for services on an arrears rather than an advance payment basis.

(l) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 shall be given the option of hiring his or her own provider.

(m) The county welfare department shall inform in writing any individual who is potentially eligible for services under this section of his or her right to the services.

(n) It is the intent of the Legislature that this entire section be an inseparable whole and that no part of it be severable. If any portion of this section is found to be invalid, as determined by a final judgment of a court of competent jurisdiction, this section shall become inoperative.

(o) Paragraphs (2) and (3) of subdivision (a) shall be implemented so as to conform to federal law authorizing their implementation.

(p) (1) Personal care services shall be provided as a covered benefit to a medically needy aged, blind, or disabled person, as

defined in subdivision (a) of Section 14051, to the same extent and under the same requirements as they are provided under subdivision (a) of this section to a categorically needy, aged, blind, or disabled person, as defined in subdivision (a) of Section 14050.1, and to the extent that federal financial participation is available.

(2) The department shall seek federal approval of a state plan amendment necessary to include personal care services described in paragraph (1) as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the **Code** of Federal Regulations.

(3) In the event that the Department of Finance determines that expenditures of both General Fund moneys for personal care services provided under this subdivision to medically needy aged, blind, or disabled persons together with expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for all aged, blind, and disabled persons receiving in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, in the 2000-01 fiscal year or in any subsequent fiscal year, are expected to exceed the General Fund appropriation and the federal appropriation received under Title XX of the federal Social Security Act for expenditures for all aged, blind, and disabled persons receiving in-home supportive services provided in the 1999-2000 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1998, as adjusted for caseload growth or as changed in the Budget Act or by statute or regulation, then this subdivision shall cease to be operative on the first day of the month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of the Department of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(4) Solely for purposes of paragraph (3), caseload growth means an adjustment factor determined by the department based on:

(A) Growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability.

(B) The average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1994-95 to 1998-99 fiscal years, inclusive, due to the level of impairment.

(C) Any increase in program cost that is required by an increase in hourly costs pursuant to the Budget Act or statute.

(5) In the event of a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Centers for Medicare and Medicaid Services that

personal care services must be provided to any medically needy person who is not aged, blind, or disabled, then this subdivision shall cease to be operative on the first day of the first month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(6) If this subdivision ceases to be operative, all aged, blind, and disabled persons who would have received or been eligible to receive in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, but for receiving services under this subdivision, shall be eligible immediately upon this section becoming inoperative for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3.

(7) The department shall implement this subdivision on April 1, 1999, but only if the department has obtained federal approval of the state plan amendments described in paragraph (2) of this subdivision.

14132.955. Personal care services that are provided pursuant to Section **14132.95** shall include services in the recipient's place of employment if both of the following conditions are met:

(a) The personal care services are limited to those that are currently authorized for the recipient in the recipient's home and those services are to be utilized by the recipient at the recipient's place of employment to enable the recipient to obtain, retain, or return to, work. Authorized services utilized by the recipient at the recipient's place of employment shall be services that are relevant and necessary in supporting and maintaining employment. However, work place services shall not be used to supplant any reasonable accommodations required of an employer by the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.) or other legal entitlements or third-party obligations.

(b) The provision of personal care services at the recipient's place of employment shall be authorized only to the extent that the total hours utilized at the work place are within the total personal care services hours authorized for the recipient in the home. Additional personal care services hours may not be authorized in connection with a recipient's employment.

14132.96. Medi-Cal personal care services provider rates established as provided in the state plan under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States **Code**, by an in-home supportive services public authority established pursuant to paragraph (2) of subdivision (a) and paragraph (4) of subdivision (b) of Section 12301.6 shall be reviewed

by the county in which the in-home supportive services public authority operates, to determine that the rates are consistent with the county budget and that the county will be able to fund any increase in its share of costs, prior to the submission of the rates to the department. Certification of the county's ability to fund any increase in rates shall accompany the submission of rates to the department.